

United States District Court  
Southern District of Texas  
F11.FD

299

APR 25 2001

Michael N. Milby  
Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

RAQUEL O. RODRIGUEZ  
AND JOSE L. RODRIGUEZ

§  
§  
§  
§  
§  
§  
§  
§

VS.

CIVIL ACTION NO. B-CV-96-177

RIDDELL SPORTS, INC.  
RIDDELL, INC.  
ALL AMERICAN SPORTS CORPORATION  
D/B/A RIDDELL/ALL AMERICAN  
AND CHRIS HOODMAN

§  
§  
§  
§  
§  
§

RESPONSE TO PLAINTIFF'S MOTION IN LIMINE REGARDING  
MESSRS. HALSTEAD, KULT, KRAEMER AND McELHANEY

TO THE HONORABLE JUDGE OF SAID COURT:

Regarding opinions based on infrequency of Jose Rodriguez's injuries.

Now comes Defendant's Riddell Inc. and All American and files this their response to plaintiff's Motion in Limine regarding Messrs. Halstead, Kult, Kraemer and McElhaney. Asserting that they cannot render opinions based on infrequency of injuries such as Jose Rodriguez's. These witnesses will testify that reports such as the "Annual Survey of Catastrophic Football Injuries 1977-1992" is reasonably relied on by the industry and those professional organizations concerned with sports safety and football safety.

The absence of other accidents is admissible to establish the absence of a defect. Koloda vs. General Motors Corp., 716, F. 2d 373 (6<sup>th</sup> Cir. 1983); Minichello vs. U.S. Industries, Inc., 756 F. 2d-26 (6<sup>th</sup> Circuit 1985); Hines vs. Joy Manufacturing Co., 850 Fed. 2d 1146 (6<sup>th</sup> Cir. 1988)

Wherefore, premises considered, Defendant moves the court to deny Plaintiff's Motion in Limine regarding Messrs. Halstead, Kult, Kraemer and McElhaney. And to allow such evidence which is within the personal knowledge of the witnesses and or meets the predicate of Rule 703 F.R.E.

Respectfully submitted,

Robert L. Guerra  
State Bar No. 08578560  
THORNTON, SUMMERS, BIECHLIN,  
DUNHAM & BROWN, L.C.  
418 E. Dove  
McAllen, Texas 78504  
956-630-3080 Telephone  
956-630-0189 Facsimile

ROBERT B. SUMMERS & ASSOCIATES  
P. O. Box 398  
Llano, Texas 78643  
(915) 248-0033-Phone  
(915) 248-0110-Fax

BY Robert B. Summers  
ROBERT B. SUMMERS  
State Bar No. 19507000  
ANN H. MEGEE  
State Bar No. 13902700  
Attorneys for Defendants

#### CERTIFICATE OF CONFERENCE

This is to certify that I had a conference with Plaintiffs' counsel, Rex Blackburn, and he 25th to agree to this motion.

Robert Summers

Robert Summers

#### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above was forwarded by telefax transmission and certified mail, return receipt requested to counsel of record on this the 25<sup>th</sup> day of April, 2001.

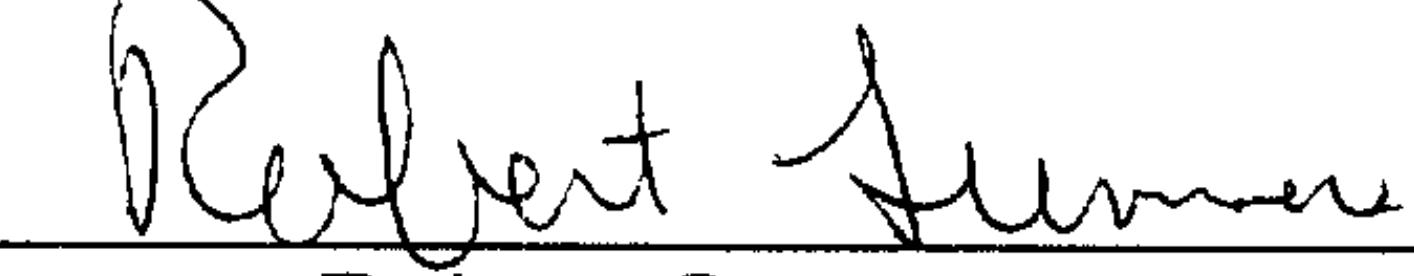
Mr. Rex Blackburn  
**EVANS, KEANE L.L.P.**  
1101 W. River Street, Suite 200  
P.O. Box 959  
Boise, Idaho 83701-0959  
VIA FAX 208-345-3514  
Telephone 208-384-1800

Mr. Mark D. Kamitomo  
**THE MARKAM GROUP, INC., P.S.**  
421 West Riverside, Suite 1060  
Spokane, WA 99201  
VIA FAX 509-747-1993  
Telephone 509-747-0902

Mr. J. Arnold Aguilar  
1200 Central Blvd.  
Artemis Square, Suite H-2  
Brownsville, TX 78520  
VIA FAX 956-504-1408  
Telephone 956-504-1100

Mr. Mark T. Curry  
**HUGHES, WATTERS & ASKANASE, LLP**  
1415 Louisiana, 37th Floor  
Houston, Texas 77002  
VIA FAX 713/759-6834  
Telephone 713-759-0818

Mr. Ramon Esparza  
Renfro, Faulk & Blakemore  
185 Ruben M. Torres, Sr. Blvd.  
Brownsville, TX 78520  
via fax 956-541-9695  
telephone 956-541-9600

  
\_\_\_\_\_  
Robert Summers